

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Complaint of

Manuel J. Chaves
With Respect To The Marketing Practices Of
Commonwealth Gas Company

Under 220 C.M.R. 12.03(81)

ANSWER OF COMMONWEALTH GAS COMPANY

Commonwealth Gas Company (“ComGas” or the “Company”) submits to the Department of Telecommunications and Energy (the “Department”) this Answer to the Complaint of Manuel J. Chaves (“Mr. Chaves” or the “Complainant”) dated February 9, 2000, and the Memorandum In Support Of Appeal On Behalf of Manuel J. Chaves (“Appeal Memorandum”).¹

For the reasons discussed below, the Department should dismiss the Complaint with prejudice and reject the Complainant’s various requests for relief.

I. BACKGROUND

A. ComGas’s Service Function

ComGas, which was organized in 1851, is a local gas distribution company serving approximately 240,000 customers in 51 communities in eastern, southeastern, and central Massachusetts. Of the Company’s 1999 firm gas unit sales, 64 percent was sold to residential customers, 28 percent to commercial customers, 4 percent to industrial customers, and 4 percent to other customers. ComGas operates under the jurisdiction of

¹ The Company has no record of receiving the February 9th Complaint directly from Mr. Chaves. The Company does have a copy of the Complaint as Attachment G to the Appeal Memorandum.

the Department, which regulates, among other matters, retail rates, service quality, and relationships with affiliates.

In meeting its obligation to provide safe and reliable service to its distribution customers, ComGas maintains an infrastructure of trained personnel that are capable of providing ordinary services, such as meter exchanges, responding to priority customer calls, including no-heat services, and responding to emergency customer calls, including odor and leak response services. In addition, ComGas offers its customers appliance maintenance and repair services; a specific maintenance program is known as the Home Heating Protection Plan. The Company provides, and for decades has provided, all of these services on a fully integrated basis with its utility operations. Integration of the service function within utility operations has allowed ComGas to maximize efficient use of existing resources, including union employees performing these services. Also, it is the Company's experience that customers demand and have come to expect a full range of services from the Company.

ComGas must keep in place the personnel and infrastructure necessary to provide safe and reliable service to its customers in the most cost-effective manner. Further, ComGas must maintain the appropriate level of available resources to respond to emergency situations. Personnel performing service function activities undergo training in all aspects of safety and gas code-related requirements. As a result, service technicians are capable of conducting visual safety checks and detecting gas odors or other potential safety problems during the normal course of business. Thus, by integrating the service function within ComGas, these resources remain available to provide reliability and safety-related services for the benefit of ratepayers. ComGas's structure for the service function allows the Company to deploy its workforce flexibly to ensure that all aspects of delivery services are provided reliably at the lowest cost. Customers benefit from this structure through low costs and by receiving the level of service they expect from the Company.

ComGas performs its service function only within its service area and provides service only to its customers. ComGas does not offer such services outside of the communities in which it provides gas distribution service; and it does not offer such services within its service area to customers who are not gas distribution customers.

Thus, ComGas's service function operates within a very limited market within Massachusetts.

ComGas accounts for its service function on a fully allocated basis. That is, the full costs of operating the service function are assigned to that function. These costs include direct labor, direct fringes related to direct labor, parts and material and an allocation of overhead expenses. All revenues derived from the service function also are tracked. By applying this accounting treatment, ComGas ensures that its other distribution services are not subsidizing its service function.

In light of the Department's recent letter concerning Bay State Gas Company's service business, ComGas will review its contractor referral process. By letter dated April 14, 2000, Bay State provided a proposal for the treatment of its service business in response to the Department's letter of October 20, 1999. Bay State's proposal included the tracking of costs and revenues for its service business on a fully allocated basis. Bay State also identified its contractor referral efforts, including identification and outreach efforts directed at contractors and its distribution to customers of its contractor referral list. By letter dated June 15, 2000, the Department responded to Bay state's proposal by finding that Bay State's proposal is consistent with the objectives of the Department in its October 20, 1999 letter. The Department further stated that Bay State's adherence to the practices outlined in its April 14th letter will address and allay the Department's concerns.

B. The Complaint

By letter dated October 28, 1999, Mr. Chaves filed a complaint with ComGas alleging that a Company brochure promoting its Home Heating Protection Plan violated the prohibition in the Department's Standards of Conduct Regulations against a distribution company engaging in joint marketing of programs with a Competitive Energy Affiliate. In accordance with 220 C.M.R. 12.03(18) and the Company's dispute resolution procedures, ComGas referred the complaint to its Dispute Resolution Official, Daniel Coquillette. In a letter decision dated November 24, 1999, Mr. Coquillette concluded that the Company's actions are permitted and that its service function is not a Competitive Affiliate under the Standards of Conduct Regulations. By letter dated December 17, 1999, Mr. Chaves sought reconsideration of Mr. Coquillette's November

24th decision. Mr. Coquillette treated Mr. Chaves's December 17th letter as a new complaint and, after further investigation, concluded that the service function within ComGas is neither a Competitive Energy Affiliate nor a Competitive Affiliate under the Standards of Conduct Regulations. By a letter dated February 9, 2000, Mr. Chaves filed with the Department an appeal of Mr. Coquillette's decisions.

By letter dated May 25, 2000, counsel for Mr. Chaves filed with the Department a Memorandum in support of Appeal on Behalf of Manuel J. Chaves ("Appeal Memorandum"). In the Appeal Memorandum, the Complainant argues that the Company's use of its brochure promoting its Home Heating Protection Plan violates the prohibition in the Standards of Conduct Regulations against joint marketing programs between a distribution company and its Competitive Affiliate or Competitive Energy Affiliate as defined in the Standards of Conduct Regulations (Appeal Memorandum at 15). The Complainant contends that the Company's service function is a Competitive Affiliate because first, the service function is a unit or division of ComGas and thus it is an Affiliate, and second, the service function's activities are competitive services because the services also are provided by other vendors on an open, competitive basis (Id. at 5, n. 2; 5-7). The Complainant contends that the Company's service function is a Competitive Energy Affiliate because there is no evidence demonstrating that the service function costs have not been recovered by ComGas through its rates (Id. at 12-13).

The Complainant further contends that a utility's service activity is a competitive service based on a Department letter dated October 25, 1999 to Bay State regarding its plan to provide services to customers through its regulated utility business (Id. at 8-9). By its October 25th letter, the Department raised concerns with Bay State's service business model regarding proper accounting to safeguard against cross-subsidization and actions by Bay State to provide access to its customers to non-affiliated vendors to perform the services.

II. ANSWER

A. ComGas's Service Function Is Fully Integrated Within The Company's Distribution Operations And Is Not A Competitive Affiliate Or A Competitive Energy Affiliate.

ComGas's service function is a part of its core utility operations. It is fully integrated into the Company's gas distribution service. The services provided by ComGas to its customers include those that are essential for the Company to meet its obligation to provide safe and reliable service to its customers. ComGas's service technicians are trained to respond to priority customer calls, including no-heat service and emergency customer calls, including odor and leak response services. Other services provided by these technicians include ordinary maintenance and repair of gas appliances. Customers have let the Company know that they expect ComGas to provide these other services as part of the Company's utility operations. All of these service activities are a part of the functions necessary for ComGas to carry out its obligations as a gas utility to its customers.

By maintaining its service function fully integrated within the Company's distribution operations, ComGas can maintain adequate levels of trained and experienced personnel to provide safe and reliable service to its customers in a cost-effective manner. This structure not only reduces costs for customers, but also provides them with peace of mind. This structure allows ComGas to deploy its work force flexibly to assist in responding promptly to emergencies (emergency calls take priority over normal service calls). Further, service technicians that are performing normal service operations at a customer location are able to utilize their expertise and resources to identify safety problems and to respond to emergency situations. Thus, ComGas has organized its utility operations to ensure that customers receive safe and reliable, high-quality service at the lowest possible cost.

ComGas has not separated its service function from its distribution operations because of the essential nature of the activities. The Company must maintain the appropriate levels of trained personnel and infrastructure to respond to emergency situations. The Company's service technicians are trained in all aspects of safety and gas code requirements. As a result, the technicians are capable of conducting visual safety

checks and detecting gas odors or other potential safety problems during the normal course of business. By maintaining service technicians within ComGas, these resources are available to provide reliability and safety-related services for the benefit of ratepayers.

Because the Company's service function is integrated as a constituent component of ComGas's overall distribution operations, ComGas has not separated that function into a distinct unit. Accordingly, the Company's service function does not meet the definition of Competitive Affiliate or Competitive Energy Affiliate under the Standards of Conduct Regulations. Thus, ComGas's brochure promoting its Home Heating Protection Plan is permitted.

B. ComGas's Controls And Procedures For Its Service Function Are Consistent With Department Policy.

Regardless of how ComGas's service function is characterized within the definition of the Standards of Conduct Regulations, the Company has in place, and is developing, controls and procedures that ensure against cross-subsidization of costs and that offer access to its customers to other vendors that can perform certain services. Regarding cross-subsidization, ComGas accounts for the costs and revenues of its service function on a fully allocated basis. The use of this accounting treatment ensures that the Company's distribution service is not subsidizing its service function.

Also, as stated above, ComGas will examine its contractor referral process that is used to inform customers of the availability of services from other vendors. These controls and procedures are consistent with the practices currently employed by Bay State for its service business, with the favorable endorsement of the Department. ComGas's controls and procedures outlined above concerning its service function substantially conform to Bay State's practices. Thus, ComGas operates its service function in a manner consistent with the policies of the Department.

With the Company's implementation of the controls and procedures stated above, ComGas's promotion of its Home Heating Protection Plan should be permitted, particularly considering the limited market within which the Company's service function operates.

III. CONCLUSION

For the reasons discussed herein, the Department should dismiss the Complaint with prejudice, and reject the Complainant's various requests for relief.

Respectfully submitted,

COMMONWEALTH GAS COMPANY

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